

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-120. Pertaining to the Promulgation of a Public Notice on Applications to Encroach in, on or over Subaqueous Lands of the Commonwealth (amending 4VAC20-120-10 through 4VAC20-120-40).**

Statutory Authority: § 28.2-103 of the Code of Virginia.

Effective Date: November 1, 2017.

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Summary:

The amendments update the public notice process regarding permit applications and identify projects or activities for which a notice is not necessary.

CHAPTER 120

~~PERTAINING TO THE PROMULGATION OF A PUBLIC NOTICE ON OF APPLICATIONS TO ENCROACH IN, ON OR OVER SUBAQUEOUS LANDS OF THE COMMONWEALTH~~ FOR PERMITS FOR CERTAIN USES OF STATE-OWNED BOTTOMLANDS

4VAC20-120-10. Authority, prior regulation, effective date Purpose.

~~A. This chapter is promulgated pursuant to the authority contained in § 28.1-23 [Repealed] of the Code of Virginia.~~

~~B. This chapter amends the previous Regulation XV concerning the requirement for public notice on all applications to encroach on subaqueous lands of the Commonwealth, and made effective November 1, 1973.~~

~~C. The effective date of this chapter is March 1, 1983.~~

The purpose of this chapter is to establish the public notice requirements that are a part of a public interest review for projects and activities requiring permits from the Marine Resources Commission for uses of state-owned bottomlands pursuant to Chapter 12 (§ 28.2-1200 et seq.) of Title 28.2 of the Code of Virginia.

4VAC20-120-20. General.

~~The Marine Resources Commission hereby requires a public notice on all applications for encroachment upon the state-owned bottoms made pursuant to Chapter 12 (§ 28.2-100 et seq.) of Title 28.2 of the Code of Virginia. Such public notice shall be made in accordance with the following provisions:~~

The Marine Resources Commission requires a public notice on all applications that require a permit from the commission pursuant to Chapter 12 (§ 28.2-1200 et seq.) of Title 28.2 of the Code of Virginia except for the following projects or activities:

1. Construction projects, structures, and activities authorized by general permit or regulation promulgated by the commission, unless such general permit or regulation specifically requires such public notice;
2. Replacement or reconstruction of structures previously authorized or permitted by the commission, provided such structures do not result in additional encroachment over state-owned bottomlands;
3. Taking sediment samples for engineering or geotechnical analysis;
4. Recovering objects from state-owned bottomlands, unless those objects have been identified as underwater historic property pursuant to § 10.1-2214 of the Code of Virginia, or from areas excluded from recovery activity by the commission in consultation with the Department of Historic Resources;
5. Restoring sand to any publically owned beach damaged by sand erosion; or
6. Constructing private piers requiring a permit pursuant to § 28.2-1205 D of the Code of Virginia.

4VAC20-120-30. Content and publication.

A. The notice shall include the applicant's name and accurately describe the nature and, extent, and location of the proposed project; ~~shall include the location of the project; and shall include the applicant's name and address.~~

B. ~~For projects which require both a state and federal permit, the district office of the U.S. Army Corps of Engineers will prepare a joint state/federal public notice, with the assistance of the Environmental Division of VMRC, which will be promulgated in accordance with U.S. Army Corps of Engineers chapters and local district policy. The public notice shall be placed in a newspaper having general circulation in the area where the project is proposed.~~

C. ~~For projects which qualify under either a project or an activity that also requires a permit from the Norfolk District of the U.S. Army Corps of Engineers nationwide or district general permit, or for which no federal permit is required, the public notice shall be placed in a newspaper having general circulation in the area where the project is proposed (Corps) and for which a Corps public notice is required, a joint state and federal public notice may be used without the placement of a notice in a newspaper by the commission.~~

D. Copies of all comments received will be provided to the ~~appropriate districts of the U.S. Army Corps of Engineers and the State Water Control Board~~ Corps and the Department of Environmental Quality.

4VAC20-120-40. Commissioner's responsibility and authority.

A. The ~~commissioner~~ Marine Resources Commissioner or his designee shall be responsible for ~~seeing~~ ensuring that the newspaper notice is published, as described in 4VAC20-120-30 ~~C above,~~ B and shall be the sole judge concerning the adequacy of content of the newspaper notice and selection of the newspaper.

B. The cost of publication of the notice required in 4VAC20-120-30 ~~C~~ B shall be borne by the applicant.

C. ~~Cost of publication of the joint state/federal public notice prepared by the Norfolk and Baltimore districts of the U.S. Army Corps of Engineers will be borne by the district which prepares the notice.~~